

## REMARKS/ARGUMENTS

By this paper, Applicant replies to the Office Action of December 9, 2008 and respectfully requests reconsideration of the application.

Claims 1, 3-10, 12-18, 20-26, 28-33, 39 and 40 are now pending, a total of 35 claims. Claims 1 and 2 are independent. No additional claim fee is due now.

### I. Support for Claim Amendments

The “new matter” prohibition of 35 U.S.C. § 132 is not violated by the addition of explicit recitation of a definition that parrots the understanding of one of ordinary skill in the art. *In re Salem*, 553 F.2d 676, 683, 193 USPQ 513, 518 (CCPA 1977). The definition of “order priority” amended into the claim is not new matter, and is not a narrowing amendment.

### II. Claim 1 and the Combination of Peterffy '804 with Konia '151

Paragraph 7 of the Action compares claim 1 to the combination of Peterffy '804 with Konia '151. Claim 1 recites as follows:

1. A method for operating an electronic trading system for the exchange of financial instruments, the method comprising the steps of:
  - in an electronic trading system designed to receive and store orders to buy and to sell financial instruments as submitted by traders, and **substantially as orders are received, to execute trades between matching buy and sell orders**, stored buy and sell orders having **priority orderings relative to each other reflecting at least one attribute of the order in addition to or instead of price**, the priority ordering used by the electronic trading system to determine priority among orders for matching for execution:
    - receiving a dynamic price improvement order, being an order to buy or sell an identified financial instrument traded on the electronic trading system, whose priority for execution against contraorders is maintained by the trading system at least in part relative to earlier-submitted orders on the same side of the market by adjusting a price associated with the dynamic price improvement order;
    - receiving orders contra to the dynamic price improvement order, and matching the contra orders to the stored orders on the same side of the market as the dynamic price improvement order substantially as the contra orders are received, the dynamic price improvement order being matched to the contra orders with the priority relative to other orders as maintained by the electronic trading system, and
    - executing transactions substantially as orders and contra orders are matched.

Claim 1 recites several features of an “order priority.” “Order priority” is a term of art that is incompatible with Konia’s “priority” in several respects. First, claim 1 is directed to

electronic trading systems where trading occurs substantially continuously and with at most small time delays. **Priority and time** are often as crucial as price in such systems—in a volatile trading market, orders with high priority trade earlier, and thus are less subject to price movements. Second, the “orders” recited in claim 1 are directed to buying or selling the **identical** financial instrument<sup>1</sup>-- there is no meaningful “priority” relationship between, for example, orders for shares in two unrelated companies. Third, “order priority” is a property of an order and its behavior **within a trading system**, that determines “**priority of being matched for execution.**” Orders that have higher priority come up for execution against counterorders at an earlier time than orders with lower priority.

Konia ’151 is directed to a system for auctioning off rankings in internet search results, golf tee times, and the like. This leads to at least three differences between the “priority” mentioned in Konia ’151 and relied on in the Office Action vs. the “order priority” recited in the claims:

- Konia’s “priority” is **the thing (outside the trading system) that is being auctioned**, not a property of **the orders** by which the auction is conducted.<sup>2</sup> For example, in Konia’s lead embodiment, the “priority” being sold through his system is the “ranking of hypertext links to web pages in search results. ... The web pages of bidders that bid higher ... are ranked higher on the search results” (Konia ’151, col. 3, lines 53-56 and 62-64); or equivalently, priority to select golf tee times (Konia ’151, col. 6, lines 48-50). The cited portions of Konia ’151 do not mention anything corresponding to “**order priority**” as recited in claim 1, “reflecting at least one attribute of the order in addition to or instead of price, the priority ordering used by the electronic trading system to determine priority among orders for matching for execution”
- Konia’s “priorities” are *significantly different commodities*—Konia effectively runs several auctions in parallel, one auction for first position in the search results, a separate auction for the second position in search results, a third auction for the third position, and the like.<sup>3</sup> Because Konia’s “priority” differentiates commodities being sold, it is essentially meaningless in the context of claim 1.
- Konia’s system is apparently an auction that has a closing time, where all bids either execute or are rejected at the same time. For example, Konia’s col. 4, lines 56-62 and col. 6, lines 55-57 only make sense in an auction where all bids close at the same time.

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<sup>1</sup> By this, we mean “identical” within the ordinary understanding in the art of trading of financial instruments – e.g., two bonds of the same issue, or bonds within the same basket for a futures contract.

<sup>2</sup> .

<sup>3</sup> with the proviso that bidders that do not win the auction for position number  $n$  fall into the auction for position  $n+1$ .

Konia's technique would not work (or at least not work well enough to be commercially practical) in the market where orders match and execute as they are received, as recited in claim 1.

### III. Conclusion

Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning this application by electronic mail.

A Petition for Extension of Time extends the shortened statutory period through June 9, 2009. Accordingly, this reply is timely.

In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that further extension of time is required, Applicant petitions for that extension of time required to make this reply timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 03-1083.

Respectfully submitted,  
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